IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 22793 of 2004

Between:

1 Smt. Kalakanti Usha Rani, W/o. Lt. Gangadhara Rao,
R/o. of Nidadavole, w.G.District.
2 Miss. Kalakanti Bhavyasri, D/o. Lt. Gangadhara Rao,
Smt. Kalakanti Usha Rani.
3 Master Kalakanti Balaramakrishna, S/o. Lt. Gangadhara Rao,
Smt. Kalakanti Usha Rani.

... PETITIONERS

AND

1 The Commercial Tax Officer, Nidadavole, W.G.District.
2 The Dy. Commercial Tax Officer, O/o. the Commercial Tax

Officer, Nidadavole, W.G.District.
3 Vanimisetty Venkata Rama Rao, S/o. Lakshmana Rao,
D.Muppavaram, Nidadavole Mandalam, W.G.District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ, order or direction particularly one in the nature of a Writ of Certiorari holding that the form IV notice of demand prior to attachment of land dt. 23.06.2003, Form -V notice of attachment dt. 27.09.2003 and the auction sale notice dt. 29.10.2004 issued by the second respondent herein namely the Dy. Commercial Tax Officer, No.1 Circle, Nidadavole as published on 21.11.2004 in the West Godavari District Gazette in respect of the disputed schedule mentioned property namely land in an extent of Ac 0.42 cents with rice mill machinery, sheds and other

equipment attached there to situated or located in Rs. No.2/1 inD.Muppavaram Village of Nidadavole Mandal of W.G.District stated to be held on 13.12.2004 for the arrears of sales tax relating to assessment years 1998-1999 and 1999-2000 to be due from the deceased assessee namely Lt.K. Gangadhara Rao, the erstwhile proprietor of Sri Pandarinatha Rice Mill, as illegal, improper, and contrary to the provisions of the APGST Act, 1957 as also APRD Act, 1996 and also opposed to the principles of natural Justice, in addition to being violative of Article -300A of the Constitution of India in as much as the property in dispute proposed to be sold in public auction on 13.12.2004 is lawful the property of the petitioners, in addition to the other items of immovable property all of ancestral nature in terms of the preliminary decree dt. 30.11.2002 in O.S. No.39/2001 on the file of Senior Civil Judge, Kovvur as well as on account of the development of the share fallen to the deceased assessee, upon the writ petitioners as legal heirs on his death in April, 2002 and also on the ground of the immunity available in respect of the shares of minors in the disputed ancestral property namely rice mill and quash the above said attachment notice dt. 27.09.2003 and the consequential proceedings on 29.10.2004 impugned sale notice and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner :MR.M.V.J.K.KUMAR

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX

The Court made the following :

Oral Order: (per Sri MHSA.J)

The respondents – Sales Tax Authorities of the State are seeking to recover their dues from late Gangadhar Rao, proprietor of M/s Sri Pandarinatha Rice Mill and have proposed to sell by public auction the properties specified in the notice published in the West Godavari District Extra ordinary Gazettee No.85 dated 21.11.2004.

Petitioners claim to be the widow and minor sons of the aforesaid late Gangadhar Rao and they claim that the property is ancestral property and by virtue of a decree of Civil Court dated 30.11.2002 in OS No.39 of 2001, shares have been determined and therefore the shares of the writ petitioners in terms of the preliminary decree in the property sought to be auctioned cannot be proceeded with.

It is by now well settled that a writ Court cannot decide the questions of title in exercise of its powers under Article 226 of the Constitution of India. Further more, we find that an efficacious alternative remedy has been provided for under the A.P.

Revenue Recovery Act, 1864. For that purpose we extract hereunder Section 17 to the extent relevant.

> **17. Claims to property distrained and sold-Revenue to be the first charge:**- Whether any person, not being a defaulter or responsible for a defaulter, may claim a right to the property distrained, and the distrainer may, notwithstanding, cause the same to be sold such claimant, on proof of such right in any Civil Court of competent jurisdiction, and in the event of the distrianer being unable to prove the responsibility for the arrear of revenue, on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with interest, costs and damages, according to the circumstances of the case."

Therefore, in our view, petitioners who have laid a claim to the property distrained had the remedy to seek appropriate relief before the civil Court of competent jurisdiction. In such view of the matter, we are not inclined to entertain the instant writ petition.

Be it, however clarified that we have not gone into the main controversy with respect to the title to the property or the right of the respondents-tax authorities to proceed against the properties in question. All such questions are kept open.

The writ petition is accordingly dismissed of. No costs.

(M.H.S. ANSARI,J)

dated 13..12..2004

(T.CH. SURYA RAO,J)

Note: Issue urgent copy

(B/o)

msv.

To

1. The Commercial Tax Officer, Nidadavole, W.G.District.
2. The Dy. Commercial Tax Officer, O/o. the Commercial Tax

Officer, Nidadavole,W.G.District.

3. 2 CCs to GP for Commercial Taxes, High Court of A.P. Hyderabad (OUT)

4. 2 CD copies.